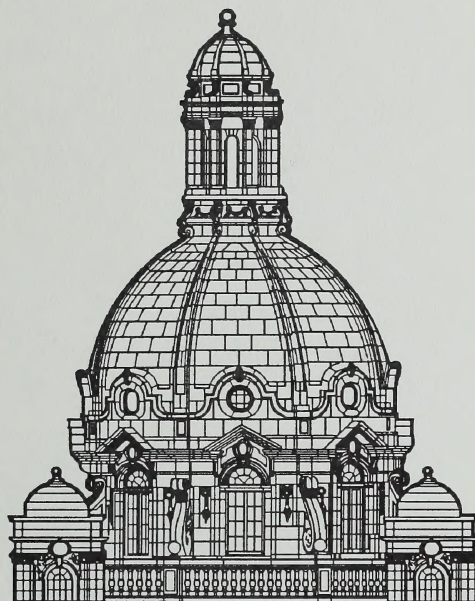


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## PETITIONER'S GUIDE TO PRIVATE BILLS PROCEDURE:



# HOW TO PETITION THE ALBERTA LEGISLATURE TO PASS A PRIVATE BILL

OFFICE OF THE PARLIAMENTARY COUNSEL  
LEGISLATIVE ASSEMBLY OF ALBERTA





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## **PETITIONER'S GUIDE TO PRIVATE BILLS PROCEDURE:**

# **HOW TO PETITION THE ALBERTA LEGISLATURE**

## **TO PASS A PRIVATE BILL**

### ***What are Private Bills?***

Private Bills are proposed legislation like any other Bill put before a house of parliament. Once passed, they become Acts of Parliament or Acts of the Legislature as the case may be, and are laws of the land, enforceable in the courts as is any other law. The difference is that Private Bills (not to be confused with "Private Members' Bills") are initiated by an individual or group of individuals to affect only one or a few persons, a corporation, service club, charity, etc., and not the population as a whole.

### ***What other types of Bills are there?***

Public Bills, are truly "public" in that they propose to regulate things of a much wider nature than Private Bills. A Public Bill might attempt to regulate an entire industry, impose a new tax, amend existing legislation, affect the administration of justice, and so on. A Public Bill, if passed, applies throughout the province, and affects everyone in that everyone is subject to it. Public Bills, introduced by members of Cabinet as instruments of that government's policy are called "Government Public Bills".

Public Bills introduced by MLAs who are not Cabinet members as statements of their own personal views are called "Private Members' Public Bills" (or "Private Members' Bills"). This guide will deal with the third, least common type of Bill, being a "Private Bill".

### ***What are Private Bills used for?***

Private Bills are proposed laws just to accommodate certain things in which there is no other way to obtain a remedy. For example, the petitioner (the person requesting the remedy) might want something for which no laws exist to provide for. A good example of this is the legal adoption of an adult. Under Alberta's *Child Welfare Act*, only persons under the age of 18 years can be legally adopted through an adoption order. The courts can't accommodate anyone older than that, because no laws exist which give them the authority to make an adoption order for an adult. There is no doubt that most adoptions involve children, but there are rare occasions where a prospective parent wishes to legally adopt someone over the age of 17 years. Perhaps the adoptive parent is a long-lost biological parent, or perhaps the adoptive parent raised the child for the greater part of the child's life, and only discovered after the child became 18 that adoption is a desirable legal recognition of the relationship that actually exists. Estate matters are affected by adoption orders, potential family relief or matrimonial claims are affected by adoption orders, and numerous other legal consequences may come about with an adoption. For this reason, an adult adoption may be desired by the petitioner. As there are no laws to effect such an adoption, the Legislature is asked to pass a law just for that individual.



Terminating a previous adoption order is another use for a Private Bill. No other legal device is available for terminating an adoption. As a matter of public policy, it is generally felt that an adoptive relationship should be no less "permanent" than a biological relationship between parent and child. The adoption was created to virtually duplicate in law the rights and obligations of biological parent-child relationships. However, there are times when overwhelming reasons exist to terminate an adoptive relationship. A Private Bill is the only way to achieve such a unique legal remedy. Because the British parliamentary system gives, in Canada, *sovereign* power to that provincial legislature or federal parliament within the limits of the constitution, a provincial legislature can legally render an adoptive relationship null and void, as it could, in theory, render a *biological* relationship legally null and void!

Another use of Private Bills is for incorporating bodies corporate. While there are numerous Public Acts under which a company or society may be incorporated, there is an occasional need for special provisions or a special corporate structure otherwise unavailable through public legislation. For example, Trust Companies and Insurance Companies incorporated in Alberta *must* be incorporated under a Private Act of the Legislature. While there is ample legislation to regulate the conduct of such entities, there is no legislation which can incorporate trust and insurance companies. Non-profit charities, hospital boards and other community organizations often seek corporate existence through a Private Act. This can be for numerous reasons such as inflexibility of the corporation's constitution, prestige, recognition in other provincial jurisdictions, etc. Be warned, however, that the constitution of a corporation created through private legislation can only be amended through private legislation.

The procedure can be costly, is often cumbersome, and risks rejection of the amending Bill by the Legislative Assembly.

A last example for using Private Bills might be to obtain an *exemption* from the public legislation which governs the laws affecting everyone else. To obtain an exemption, the reasons must be overwhelming and unique. In such a case, the Legislative Assembly might well be persuaded that an application of the public law would not be equitable in the circumstances. Occasionally, out-dated or outmoded laws still exist on the books which have no relevance in today's society. A Private Bill can exempt the petitioner from the effect of the law until such time that the Government might repeal the old law entirely. Sometimes a situation may arise which is so unique and exceptional, that an application of the standard laws might be perceived to create a miscarriage of justice. The courts have little room to manoeuvre in such cases. The Legislature on the other hand, can easily make an exception to the law. For example, a limitation period might be extended, a tax-exemption might be provided to exempt the petitioner from either provincial or municipal taxation. The reason for such a request however, cannot be flippant, frivolous or otherwise designed to seek a privileged position amongst one's competitors. The Legislative Assembly will usually require an overwhelming public policy reason which would justify or necessitate legislating such an exemption. In many cases, the Assembly may refuse to pass private legislation exempting a petitioner from the operation of public law, even though it might be seen by some to create an injustice. It is the Legislative Assembly's first priority to consider public policy issues in the context of providing for the population as a whole. If an exemption can be accommodated without inequity to others as a result, the exemption might well be provided.



However, if the overall ramifications of such legislation would create a serious public policy difficulty, such as dozens of petitioners approaching the Legislature to obtain an exemption for themselves from laws they found merely inconvenient or cumbersome, the Assembly would be well-advised to refuse to pass such a provision to avoid a run on extraordinary remedies.

It is important to note that the *purpose* of a Private Bill is to provide a remedy where no other remedy exists. If something can be achieved through the courts, a government department or agency, a private firm, or a lawyer, the Legislative Assembly is not likely to look favourably upon any application for private legislation asking for something which can otherwise be achieved. The Committee must also be cognisant of matters which take up the time of the Assembly which might prevent the House from considering other important matters where the Legislature is virtually the institution of last resort.

#### ***Who do I contact to get a Private Bill?***

The Private Bills Committee of the Legislative Assembly administers Private Bill petitions through the Office of the Parliamentary Counsel. The Parliamentary Counsel is a lawyer who operates within the Legislative Branch of Government instead of the Judicial Branch. He or she is specialised in both legislative drafting and the parliamentary procedures required to have a Private Bill considered by the Legislature on a petitioner's behalf. The office will organise all aspects of checking the drafting and arranging for printing of the Bill, arranging for a hearing before the Private Bills Committee if required, ensuring all legalities and evidence presented to the Committee are in order, and so on.

The Parliamentary Counsel acts in this capacity much like a Clerk of the Court and a Master in Chambers all in one, but can also examine witnesses and other evidence during the hearing so that he or she may advise the members of the Committee on various aspects of the proposed legislation. The Office of the Parliamentary Counsel is located at:

**Office of the Parliamentary Counsel  
803 Legislature Annex  
9718 - 107 Street  
Edmonton, Alberta T5K 1E4**

**Telephone: (403) 422-4837.**

#### ***What steps are involved in petitioning for a Private Bill?***

The procedures for petitioning for a Private Bill are set out in the Standing Orders of the Legislative Assembly, which is the "rule book" of the Assembly. Before anything else is embarked on, the petitioner must ensure that the remedy he or she seeks is within provincial competence. For provincial or municipal matters such as adoptions, exemption from or variance of the terms of a provincial statute or by-law, trust and insurance companies, municipal issues, etc. the provincial legislature is the appropriate house of parliament to petition. For federal matters such as marriage and divorce, military issues, exemption from, or variance of the terms of a federal statute, immigration, citizenship, etc., a Private Bill must be requested from the federal parliament in Ottawa. There are some concurrent areas of jurisdiction which can be achieved through either a provincial or the federal parliament, most notably the incorporation of companies.



The Office of the Parliamentary Counsel can assist in determining which level of government is appropriate for the remedy the petitioner seeks.

Second, the petitioner must be aware of the fact that his or her Private Bill can only be dealt with while the Legislature is in session. *All documents, advertising and payment of fees must be received in the Parliamentary Counsel Office no later than 15 days after the first day of a session.* Spring session of the Legislature usually commences in late February or early March and lasts until June or July. Not every year has a Fall session, but if a Fall Sitting has been called, it usually commences in October and adjourns before Christmas. The date a session commences is always publicised, and the Clerk of the Assembly will advertise in most major newspapers a notice to all Private Bill petitioners of the deadline to receive applications.

### ***Step 1: Preparing the Petitions***

In brief, the petitioner must prepare and sign two petitions; one to the Lieutenant Governor, and one to the Legislative Assembly, which briefly describe the objects of the Private Bill the petitioner desires. Examples of the two petitions are provided in Schedules "A" and "B" attached at the end of this booklet. Ensure the format is the same in the preamble and concluding "prayer". The petitioner must briefly describe the objects of the Bill where indicated. The petition need not be long, technical, or go into great detail about the legislation requested. The petition may be signed by a solicitor on behalf of the petitioners, or by the petitioners directly. There is no minimum number of petitioners required, but in the case of an incorporation of a body corporate, all petitioners must be 18 years of age or more.

### ***Step 2: Drafting the Bill***

The petitioner must then have drafted, in Alberta legislative drafting style, a model Bill the petitioner would like passed, to be submitted in duplicate. If the Bill requested is a *new* statute, margin notes summarising the section must accompany the draft, one margin note for each new section. Subsections and clauses should not have margin notes. If the Bill requested is an *amending* Bill to existing legislation, explanatory notes must be completed for placement on the page opposite each major amending provision in the Bill.

There are a number of drafting rules to consider in Alberta. The following provides a few examples. (a) As much as is possible, language should be gender-neutral (eg.: "he" or "she" should be "the individual" or "the person", etc.). (b) Each section or subsection should contain no more than one sentence. Clauses and sub-clauses must be included as part of the one carefully drawn sentence in that section or subsection. (c) Alberta no longer uses the "long form" English legislative titles (eg.: "An Act to Provide For the Adoption of John Smith by John and Jane Jones"), and use of short titles is encouraged (eg.: "John Smith Adoption Act"). (d) Clauses and sub-clauses should appear at the end of a section or subsection, not in the middle. For guidance, solicitors should consult the Statutes of Alberta (non-consolidated, yearly issues) which include both public and private Acts.

### ***Step 3: Advertising***

A notice published in the "legal notices" section of a newspaper in the region where the petitioner lives, or where the subject matter of the Private Bill is located, must be published once a week for three consecutive weeks.



The same notice must be advertised in two consecutive issues of the Alberta Gazette, which is published twice a month.

*Petitioners are advised to advertise well in advance so advertising is completed by the deadline date.*

While the Private Bills Committee may, in extraordinary circumstances, waive certain deadlines or advertising requirements, such an exception is unlikely if the only reason for not being able to meet the deadline is insufficient preparation in advance for the upcoming session. The Committee will normally ask that you prepare all required items for the ensuing session of the Legislative Assembly.

*November 1st and the 15th Day After  
Session Commences:*

**There are two important dates to remember.** (1) Petitioners should be aware that advertising must not *commence* earlier than the *1st day of November* immediately before the next session, which is usually called for mid-February to mid-March of the following year. (2) The advertising must be *completed* by the *15th day after the opening day* of session.

Thus, if a Bill is to be passed in the Fall session of 1993, advertising must be commenced after November 1st, 1992. If a Bill is to be passed in the next Spring session of 1994, advertising must commence after November 1st, 1993. In both a Fall and a Spring sitting, advertising must be completed by the 15th day after opening day of session. *Remember however, not all years have a Fall sitting, so Bills proposed for Fall may have to be dealt with the following Spring.*

*Format of the Advertisement:*

The Notice appearing in the Alberta Gazette and the newspaper must follow the format in the attached Schedule "C". The advertisement should briefly set out the objects of the Bill or the remedy requested from the Legislature. *As this is a new format, ensure the Alberta Gazette and the newspaper involved print the notice exactly as it appears in the attached example.* Most newspapers and the Alberta Gazette are accustomed to advertising in the old format. By showing each publication the new sample advertisement, you will be guaranteed that the essential information is contained in the notice.

*Statutory Declarations:*

Statutory Declarations must be completed both for the advertising in the newspaper and the advertising in the Alberta Gazette. Each declaration should accompany the application package sent to the Legislative Assembly. The Alberta Gazette and most major newspapers will be able to assist in the completion of the Statutory Declarations. A copy of the advertisement should be attached to each declaration as an exhibit.

***Step 4: Finding an MLA to Sponsor the Bill***

Only a private Member (non-Cabinet MLA) can introduce a Private Bill into the Assembly. The petitioner should approach the appropriate MLA to sponsor the Bill. The MLA may be the petitioner's own elected representative, but it is not necessary to use the MLA from the petitioner's own constituency. Any private Member may sponsor the Bill, and it is completely irrelevant whether the MLA is from the government or an opposition party.



Private Bills are not reflective of any party's platform or ideology, so party affiliation of the sponsoring MLA need not be a consideration. The MLA need not personally support the objects of the Bill. It is for the Assembly itself to decide whether or not the Bill will be passed, and it is every citizen's right to petition the Assembly to consider a Private Bill.

If the petitioner is unfamiliar with any MLA who might sponsor the Bill, assistance may be obtained from the Parliamentary Counsel who will approach a Member on your behalf.

#### ***Step 5: Fees***

The fee levied for the consideration of a Private Bill by the Legislative Assembly is \$200.00 for a Bill not exceeding 10 pages (450 words per page) and an additional \$10.00 per page in excess of 10 pages. Remittance should be made by certified cheque, law firm cheque or money order made payable to the Provincial Treasurer. Payment should accompany all other documents. Fees are *not* refundable in the event the Bill is not passed by the Assembly, or the Bill is withdrawn for any other reason. The fee covers only a fraction of the Bill's real cost to the Legislative Assembly.

#### ***What other points are there to consider?***

It is always wise to check with the Office of the Parliamentary Counsel well in advance of petitioning the Legislative Assembly for a Private Bill. Depending on the type of Bill requested, other authorities or government departments may have to be consulted such as the Superintendent of Insurance, Alberta Treasury, a municipality, or the Department of Consumer and Corporate Affairs. Certain individuals whose rights may be affected by the Private Bill may also have to be notified directly, if possible.

The Parliamentary Counsel is in a position to advise each petitioner of the requirements for the Private Bill desired, give assistance in the drafting of such Bill to be consistent with Alberta's legislative drafting style, and so on.

#### ***FINAL CHECKLIST:***

Before the 15th day after the commencement of a session, the petitioner must have submitted to the Office of the Parliamentary Counsel the following items:

1. Petition to the Lieutenant Governor (2 copies);
2. Petition to the Legislative Assembly (2 copies);
3. Draft Bill (2 copies);
4. Statutory Declaration of advertising in 2 issues of Alberta Gazette;
5. Statutory Declaration of advertising in 3 issues of newspaper;
6. Required fee made payable to Provincial Treasurer;
7. Name of the MLA who has agreed to sponsor the Bill, if arranged;
8. Any other materials which may be relevant to Private Bills Committee in consideration of the petitioner's application (eg.: certificates from other authorities or individuals, background, etc.).



### ***What happens at the hearing?***

Once the application is received complete in the Office of the Parliamentary Counsel, assistance will be given where necessary to adjust drafting, documentation, and so on. The Parliamentary Counsel will assess the Bill as to its level of complexity and submit the application before the Private Bills Committee for a hearing date. While the Committee may waive the need for a hearing, this is done only in the most extenuating circumstances. Before the hearing, the MLA sponsoring the petitioner's Bill will present the Bill in the whole Assembly (first reading).

At present, the Private Bills Committee meets every Wednesday morning during session. Once the petitioner or the petitioner's solicitor is advised of the hearing date, the petitioner, counsel and any witnesses relevant to the application are expected to attend at the main chamber of the Legislature Building in Edmonton at the time designated. Petitioners and counsel are expected to dress appropriately for attendance at Alberta's highest court. Once the hearing commences, the petitioner or the petitioner's counsel will be invited to make a brief presentation to the Committee about the reasons for the Private Bill requested. The Committee, which is comprised of MLAs from all parties, may direct questions to any of the parties or witnesses. Certain questions may be directed to the parties from the Parliamentary Counsel who is responsible for advising Committee members on points of law, possible contentious issues in the Bill, and recommending certain considerations of the Bill's contents. All evidence is given under oath, just as in a court room.

One interesting contrast to a court of law is that even the petitioner's counsel is sworn in, because the Legislative Assembly is a separate jurisdiction independent of the courts and thus independent of the solicitor's duty to the judicial branch as a member of the Law Society.

In actuality, the hearing is usually fairly informal in style for the petitioners and witnesses. The Parliamentary Counsel will advise on all procedural issues and protocol before the hearing. While the procedure may seem somewhat formal or intimidating to a casual observer, the Chairman will ensure parliamentary procedures are adhered to, so the parties may relax about that aspect of the hearing and simply concentrate on their presentation and answers to questions which may be asked of them.

In addressing the members of the Committee, the parties should refer to "Sir" or "Ma'am" (unless that MLA's individual name is known to the person), and the Chairman of the Committee referred to as "Mr. Chairman" or "Madam Chairman", as applicable.

As a final note, petitioners should be aware that persons whose rights may be adversely affected by the Bill might wish to give evidence to the Committee to oppose the application. The petitioner will be advised in advance of any interested parties who will be making a presentation, and the petitioner will be given the opportunity to respond to any issues raised, or even to cross-examine should the Committee deem it appropriate. Unwilling witnesses may also be summoned to appear by a Warrant of the Legislative Assembly pursuant to the *Legislative Assembly Act*. Only the Private Bills Committee by resolution can authorise the issuance of a Warrant.

The Office of the Parliamentary Counsel will be pleased to assist in this process should the issuance of a Warrant be deemed necessary by any party.

### ***How will the Bill proceed after the hearing?***

Once the hearing is completed, you will be excused by the Chairman. Consideration of the Bill will not occur until the hearings on all Private Bill applications for that session are completed. Once consideration of the Bill is concluded, which is done *in camera*, a report will be presented to the whole Assembly with one of 3 recommendations for each Private Bill:

1. to proceed as originally presented in the House;
2. to proceed with certain changes as recommended by the Committee; or
3. not to proceed.

If the Bill is recommended to proceed as is or to proceed with changes, the Bill will go through second reading, Committee of the Whole (where changes are implemented), third reading and finally, Royal Assent. The Bill, unless otherwise stated, will come into effect on the beginning of the day the Bill is assented to. The petitioner will be advised of the status of the Bill if and when passed.

While it is unusual to require changes to the text of a Bill after submitted, changes sometimes are necessary when unforeseen circumstances arise. In the event of a change, the Parliamentary Counsel should be advised immediately so that changes may be implemented in time.

***Any questions may be directed to:***

***The Office of the Parliamentary Counsel  
803 Legislature Annex  
Edmonton, Alberta  
T5K 1E4***

***Tel: (403) 422-4837***

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## SCHEDULE "A"

### FORM OF PETITION TO LIEUTENANT GOVERNOR

for a

### PRIVATE BILL

To his Honour

The Lieutenant Governor of the Province of Alberta.

The Petition of the Undersigned *John Smith and Mary Smith*, of the *City of Edmonton*, in the *Province of Alberta* humbly shows:

That (*here state the object desired by the petitioner in soliciting an Act*).

#### EXAMPLES:

*John Smith and Mary Smith wish to adopt Edward Jones, who is older than the age of 18 years and cannot be legally adopted under the Child Welfare Act.*

*John Smith and Mary Smith wish to be incorporated as a body corporate under the name "Smith's Life Insurance Corporation", to promote, sell and provide life insurance coverage to individuals, such corporation's head office being located at Calgary, Alberta.*

*John Smith and Mary Smith wish to be exempted from the provisions of the Limitation of Actions Act so that litigation may be commenced against an individual who caused damage to their son, Edward Smith, being brain damage which only became apparent after the time for commencing an action had expired in Alberta.*

*Fr. John Smith and Sr. Mary Smith wish to be incorporated as a benevolent non-profit society known as Virgin Mary Hospital Foundation, to administer to the sick and elderly, such society's head office being located at Grande Prairie, Alberta.*

*John Smith wishes to terminate his adoption to his mother, Mary Smith.*

Wherefore your petitioner humbly prays that Your Honour may be pleased to sanction the passing of an Act for the purposes mentioned.

And as in duty bound your petitioner will ever pray.

(Signature)

(Date)

## SCHEDULE "B"

### FORM OF PETITION TO LEGISLATIVE ASSEMBLY

for a

### PRIVATE BILL

To the Honourable, the Legislative Assembly of Alberta, in Legislature Assembled:

The Petition of the Undersigned *John Smith and Mary Smith*, of the *City of Edmonton*, in the *Province of Alberta* humbly shows:

That (*here state the object desired by the petitioner in soliciting an Act*).

#### EXAMPLES:

*John Smith and Mary Smith wish to adopt Edward Jones, who is older than the age of 18 years and cannot be legally adopted under the Child Welfare Act.*

*John Smith and Mary Smith wish to be incorporated as a body corporate under the name "Smith's Life Insurance Corporation", to promote, sell and provide life insurance coverage to individuals, such corporation's head office being located at Calgary, Alberta.*

*John Smith and Mary Smith wish to be exempted from the provisions of the Limitation of Actions Act so that litigation may be commenced against an individual who caused damage to their son, Edward Smith, being brain damage which only became apparent after the time for commencing an action had expired in Alberta.*

*Fr. John Smith and Sr. Mary Smith wish to be incorporated as a benevolent non-profit society known as Virgin Mary Hospital Foundation, to administer to the sick and elderly, such society's head office being located at Grande Prairie, Alberta.*

*John Smith wishes to terminate his adoption to his mother, Mary Smith.*

Wherefore your petitioner humbly prays that Your Honourable Assembly may be pleased to pass an Act for the purposes mentioned.

And as in duty bound your petitioner will ever pray.

(Signature)

(Date)



## SCHEDULE "C"

### FORM OF ADVERTISEMENT IN ALBERTA GAZETTE AND NEWSPAPER

for a

### PRIVATE BILL

#### NOTICE

#### Name of Proposed Private Act Here

NOTICE is hereby given that a petition will be submitted to the Lieutenant Governor and the Legislative Assembly of the Province of Alberta at its next session for the passage of a Bill by John and Mary Smith (*here state the object desired by the petitioner in soliciting an Act*).

#### EXAMPLES:

*to adopt Edward Jones, who is older than the age of 18 years and cannot be legally adopted under the Child Welfare Act.*

*to be incorporated as a body corporate under the name "Smith's Life Insurance Corporation", to promote, sell and provide life insurance coverage to individuals, the head office of such corporation being located at Calgary, Alberta.*

*to be exempted from the provisions of the Limitation of Actions Act so that litigation may be commenced against Sidney B. Reckless, of Red Deer, Alberta, who allegedly caused damage to their son, Edward Smith, resulting from a motor vehicle accident on or about the 1st day of July, A.D. 1990, in Red Deer, Alberta, inflicting brain damage which only became apparent after the time for commencing an action had expired in Alberta.*

*to be incorporated as a benevolent non-profit society known as Virgin Mary Hospital Foundation, its head office being located in Grande Prairie, Alberta, to administer to the sick and elderly.*

Any persons whose rights or property are materially affected by the proposed legislation may contact the Legislative Assembly in writing no later than the 15th day following the opening day of session should they wish to make a representation relevant to this application. Correspondence should be addressed to the Office of the Parliamentary Counsel, 803 Legislature Annex, Edmonton, Alberta, T5K 1E4. Telephone (403) 422-4837.

DATED at the City of Edmonton, in the Province of Alberta, this 1st day of January, A.D. 1992.

(Name and address of petitioner or petitioner's counsel).









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